STATE OF MICHIGAN

BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. DAVID MARTIN BRADFIELD
36th District Court
421 Madison Avenue
Detroit, MI 48226

FORMAL COMPLAINT NO. 79

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EXAMINER'S REPLY TO RESPONDENT'S OBJECTIONS TO MASTER'S REPORT

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INTRODUCTION

The formal complaint charges Judge David Martin Bradfield ("Respondent") with two separate instances of misconduct. The more recent was in April 2005, involving physical assault and verbal abuse against Anthony Adams, the deputy mayor of the City of Detroit, and his wife, who is 36th District Court Judge Deborah Ross Adams. Respondent's temper tantrum took place at the judges' entrance to the 36th District Court. Respondent shouted, used profanity, and poked Deputy Mayor Adams in the chest.

The earlier occasion was in October 2002 at the Gem Theatre Parking Garage. Respondent became angry when a parking space for him was not available, as the parking agreement between the structure and the court had not yet taken effect. Although the attendant offered Respondent a parking space for that day anyway, Respondent shouted and ranted and raved before speeding away.

The master overwhelmingly sustained all material allegations in the formal complaint. Moreover, the master specifically found portions of Respondent's testimony to be "not credible," a diplomatic way of saying "a lie." Respondent's objections are all without merit, as addressed below. The Commission should adopt the master's findings of fact and recommend that the Supreme Court remove Respondent from office.

I. COUNTERSTATEMENT OF FACTS

Count I

Hon. David Martin Bradfield (Respondent) is a judge with the 36th District Court. [T, 253 (Respondent)] On April 6, 2005, Anthony Adams (Adams), who is Deputy Mayor of the City of Detroit, parked his car on Madison Avenue in Detroit, in front of the 36th District courthouse, to pick up his wife for lunch. [T, 26-27 (Adams)] Adams' wife, Hon. Deborah Ross Adams (Judge Ross Adams), is a judge serving on the 36th District Court. [T, 77 (Judge Ross Adams)]

Adams was waiting in his car for his wife when Respondent, who had left the courthouse, returned. [T, 29 (Adams), 261 (Respondent)] While he was waiting, Adams noticed an individual whom he recognized to be Respondent, driving a Corvette, pull up next to his own car. [T, 30 (Adams)] The very first thing Respondent did or said was to tell Adams to "move his mother fuckin' car or he would have [Adams'] ass ticketed and towed." [T, 31 (Adams)] Adams did not reply or move his car. [T, 31 (Adams)] Respondent admits that he told Adams to move his "mother fuckin' car." [T, 266 (Respondent)]

After Adams did not move his car, Respondent backed his car up and sought assistance from City of Detroit Police Officer Sheila Gray (Gray), who was assigned to the door, for assistance. [T, 31 (Adams), T, 267-268 (Respondent), T, 158-159 (Gray)] Although Adams had permission in general from the chief judge to park there [T, 188 (Judge Atkins)], and from Gray in particular on this occasion

[T, 156-157 (Gray)], Gray asked him to be the "bigger person" and move his car. [T, 159 (Gray)] Gray was trying to keep the situation calm, and asked Adams to move his car even though another parking space was available. [T, 159 (Gray)] Adams moved his car forward as there was space in front of his car. [T, 32 (Adams)] Respondent again pulled his car alongside Adams' vehicle, and told Respondent to move his car or he would have his "ass ticketed and towed." [T, 32 (Adams)]

Adams again moved his car even further forward. [T, 33 (Adams)] Around that time, DiAnn Webb (Webb), who is Judge Ross Adams' clerk, approached Adams and advised him that the judge was not finished with her docket, and she wanted him to come to her courtroom. [T, 32 (Adams), T, 129 (Webb)] Webb and Adams then approached the judges' entrance to the court, which Adams is authorized to use. [T, 33 (Adams), T, 188 (Atkins)]

As Adams and Webb reached the door, Respondent approached them, grabbed Adams by his shoulder, and pulled him away from the door. [T, 33-34 (Adams)] Respondent began screaming or yelling at Adams that he could not use the judges' entrance, called Adams a "mother fucker," and struck him repeatedly. [T, 34 (Adams), T, 130 (Webb)] Respondent thumped Adams in the chest at least five times, claimed he was "street," and threatened to "kick [Adams'] ass." [T, 34 (Adams)] Gray described Respondent as using a "loud and aggressive voice," told Adams he could not use the judges' door, and in a threatening manner said he

could go to the street. [T, 162 (Gray)] She also confirmed that Respondent struck Adams in the chest. [T, 162 (Gray)] Officer Gray intervened in the situation, told Respondent he "couldn't do that," and stood between the individuals. [T, 36 (Adams), T, 162 (Gray)]

Adams understood the phrase "I'm street" as a reference to being a "tough guy" who could "whip [Adams'] butt." [T, 34 (Adams)] He believed that Respondent was attempting to provoke a fight. [T, 36 (Adams)] Adams confirmed that the poking hurt, and that he was embarrassed as other people were walking by and saw the incident. [T, 34-35 (Adams)] However, Adams did not raise his voice, use profanity, or use any return physical force against Respondent. [T, 35 (Adams), T, 131 (Webb)] Officer Gray confirmed Adams did not say anything at that time. [T, 162 (Gray)] She ended the incident by directing Adams and Webb to use the employees' entrance at the front of the courthouse, and for Respondent to use the elevator. [T, 163 (Gray)]

Adams and Webb proceeded to Judge Ross Adams' courtroom, where they told her about the incident. [T, 41 (Adams), T, 133 (Webb)] Adams, Webb, and Judge Ross Adams then returned to the judges' door, where they began discussing the matter with Officer Gray. [T, 41 (Adams), T, 133 (Webb), T, 78-79 (Judge Ross Adams)] Soon after they began the conversation, Respondent appeared. [T, 42 (Adams), T, 133 (Webb), T, 80 (Judge Ross Adams)] Respondent again began his "I'll-kick-his-ass-I'm-street tirade." [T, 42 (Adams)] Judge Ross Adams

reported Respondent was yelling and screaming, and that he referred to her "mother fuckin' husband" and that he could go to the street with him [T, 80, 84 (Judge Ross Adams)] Judge Ross Adams understood Respondent's statement "go to the street" was an invitation to fight her husband. [T, 84 (Judge Ross Adams)] Officer Morris Syfax, who reported to the judges' door to relieve Officer Gray for lunch, heard Respondent say, "mother fucker, I can go street." [T, 240 (Syfax)] Respondent admitted that he called Adams a "mother fucker" in front of Judge Ross Adams. [T, 279 (Respondent)]

At the time, Respondent was shaking his hand in Judge Ross Adams' face, [T, 81 (Judge Ross Adams), T, 133 (Webb)] and even struck her on the nose. [T, 82 (Judge Ross Adams)] Respondent could not deny that his finger touched Judge Ross Adams' face. [T, 277 (Respondent)] In response, Judge Ross Adams asked Respondent to take his finger out of her face. [T, 82 (Judge Ross Adams), T, 133 (Webb)] After continuing the display for several minutes, the incident ended when Adams left to return to his office, and Respondent exited the area. [T, 45 (Adams), T, 85 (Judge Ross Adams), T, 134 (Webb)]

Judge Ross Adams then reported the incident to 36th District Court Chief Judge Marylin Atkins. (T, 85 (Judge Ross Adams)] Judge Atkins scheduled a meeting for all involved in the incident, including Adams (whom Judge Atkins called and asked to return to the court). [T, 189-190 (Judge Atkins)] The first individuals to appear were Judges Adams and Atkins, who were later joined by

Respondent. [T, 86 Judge Ross Adams) When he joined the meeting, Respondent began yelling and screaming at Judge Ross Adams. [T, 86 (Judge Ross Adams)] His demeanor continued to be "just awful." [T, 135 (Webb)] Respondent admitted his actions, but asserted Adams had acted belligerently and he was responding in kind as he was "not going to take someone talking to him like that." [T, 192 (Judge Atkins)] Respondent asserted to Judge Atkins that "it's a man thing." [T, 192 (Judge Atkins)] Judge Atkins confirmed that during the meeting, although Respondent raised his voice and was very upset, Judge Ross Adams did not raise her voice even though she was emotional. [T, 202 (Judge Atkins)]

Adams later joined the meeting, and again parked on Madison Avenue and used the judges' door to gain access to Judge Atkins' chambers. [T, 46 (Adams)] During the meeting, Respondent described Adams as a "well-dressed thug," and "one of those arrogant attorneys who always tries [*sic*] to park in front of the 36th District Court." [T, 46-47 (Adams)] Respondent also admitted that he had called Adams a "mother fucker." [T, 141 (Webb)]

The next day, Respondent wrote letters of apology to Adams and Judge Ross Adams, where he admitted that his "actions were an embarrassment to myself and to the office that I hold," and that "we as judges are held to a higher standard." [Formal Hearing Exhibits 8 and 9] Respondent also admitted he had no authority to "do anything down there," meaning monitoring parking or the use of the judges' door. [T, 280-281 (Respondent)] The responsibility for enforcing security of the

court is Chief Judge Atkins, and not that of Respondent. [T, 193-194 (Judge Atkins)] Adams and Webb each testified that Adams remained calm and maintained his professional dignity throughout the incident. [T, 47 (Adams), T, 131 (Webb)]

Count II

The 36th District Court leased a number of parking spaces from the Gem Theater Parking Structure in October 2002, and some spaces on the first level were specifically reserved for judges. [T, 207-208 (Lee)] The agreement was to take effect on October 7, 2002 (a Monday). [T, 224 (Davis)] On the preceding Wednesday, before the agreement had taken effect, Respondent pulled into the structure in a Corvette. [T, 208-209 (Lee)] When the parking attendant, Noah Lee, asked for the $5.00 parking fee, Respondent replied he was "Judge Bradfield" and he had reserved parking. [T, 209 (Lee)] When Lee replied that there was no parking available on the first level, Respondent began to "rant and rave" that he should be able to park on the first floor. [T, 209 (Lee)] He asserted that Respondent was not listening to what he was saying. [T, 210 (Lee)]

The attendant then displayed a document that reflected that the parking agreement had not started, and Respondent continued "blessing out" the attendant. [T, 210 (Lee)] Lee offered to allow Respondent to park in another space that was available, and showed Respondent the document that reflected the starting date for

the parking agreement. [T, 210-211 (Lee)] Respondent's reaction was to take the document and fling it down without reading it. [T, 211 (Lee)] Respondent swung his car around, and "peeled rubber," meaning he squealed his car tires, when exiting the lot. [T, 211 (Lee)] Respondent could not deny that the incident involving Lee occurred. [T, 289-290 (Respondent)]

Lee later discussed the matter with 36th District Court Administrator Otis Davis. [T, 212 (Lee)] Lee's reason for reporting the incident was to insure that he was not held responsible if the court contract was lost because of the incident, as it was recently obtained. [T, 212 (Lee)] Davis confirmed that Lee had spoken to him regarding an incident with a judge, and that the judge was the Respondent. [T, 225-226 (Davis)]

II. MASTER'S FINDINGS OF FACT ARE SUPPORTED BY EVIDENCE

Both the Commission, and ultimately the Supreme Court, should give proper deference to the master's ability to view the witnesses' demeanor and comment on their credibility, even in light of the power of *de novo* review. *In re Seitz,* 441 Mich 590, 594 n 4 (1993); *In re Jenkins,* 437 Mich 15, 22 (1991); *In re Loyd,* 424 Mich 514, 535 (1986). The Examiner urges the Commission to adopt the master's findings of fact in their entirety, as they are established by the facts presented at the formal hearing as described above. [MR, 28-33]

In evaluating the Respondent's conduct, the Michigan Supreme Court has determined that the Commission must adopt an objective approach, rather than focus on subjective elements.

> [T]he proper administration of justice requires that the Commission view the Respondent's actions in an objective light. The focus is necessarily on the impact his statements might reasonably have upon knowledgeable observers. Although the Respondent's subjective intent as to the meaning of his comments, his newly exhibited remorsefulness and belated contrition all properly receive consideration, any such individual interests are here necessarily outweighed by the need to protect the public's perception of the integrity of the judiciary. *In re Ferrara*, 458 Mich 350, 362 (1998).

THE MASTER'S FINDINGS OF FACT

Respondent emphasized that his findings of fact were drawn from all of the testimony of those persons who testified at the hearing, and particularly from those portions of testimony quoted in his opinion. The findings are listed verbatim below, and are followed by references to the supporting evidence from the formal hearing.

Count I

1. **Judge Bradfield initiated the encounter with Mr. Adams while the latter was sitting in his vehicle waiting for his wife, Judge Ross Adams.** [MR, 28]

   Supporting evidence: [T, 26-27, 29 (Adams)]

2. **Judge Bradfield had no authority to supervise or enforce the parking restrictions on Monroe Street, and he was simply acting as an "officious intermeddler."** [MR, 28]

   Supporting evidence: [T, 280-281 (Respondent), T, 193-194 (Judge Atkins)]

3. **When ordering Mr. Adams to move his automobile, Judge Bradfield identified himself and implied that he was acting in his official capacity as a judge of the court.** [MR, 28]

   Supporting evidence: [T, 266 (Respondent)]

4. **Judge Bradfield's contention that Mr. Adams failure to identify himself as Deputy Mayor and Judge Ross Adams' husband contributed to the resulting acrimony is specious at best, and without merit.** [MR, 29]

   Supporting evidence: [T, 291 (Respondent)]

5. **Judge Bradfield became incensed when Mr. Adams merely moved his car forward and remained standing in the judges' parking area.** [MR, 29]

   Supporting evidence: [T, 33-34 (Adams), T, 269-270 (Respondent)]

6. **All witnesses who observed Mr. Adams noted his reserved demeanor and that he failed/refused to respond to Judge Bradfield's vituperations, which compels a finding that it is unlikely that Mr. Adams used the calumnious appellation alleged by Judge Bradfield. (Certainly, if Mr.**

Adams told Judge Bradfield to "take a pill," and even if he used the epithet as claimed by Judge Bradfield, this was insufficient provocation to justify Judge Bradfield's irrational behavior.) [MR, 29]

Supporting evidence: [T, 47 (Adams), T, 131 (Webb), T, 162 (Gray)]

7. **Upon observing Mr. Adams exit his vehicle and approach the "judges' door," Judge Bradfield became further incensed and rushed to intercept Mr. Adams, physically grabbed Mr. Adams by the shoulder, poked him in the chest several times and offered to fight.** [MR, 29]

Supporting evidence: [T, 33, 34, 36 (Adams), T, 130 (Webb), T, 162 (Gray)]

8. **Officer Gray found it necessary to interpose herself between the two men to prevent further physical contact by Judge Bradfield.** [MR, 30]

Supporting evidence: [T, 162-163, Gray)]

9. **This incident took place in public on the sidewalk outside the district court.** [MR, 30]

Supporting evidence: [T, 38 (Adams), T, 129-130 (Webb), T, 161 (Gray)]

10. **A battery, or an assault and battery, is the willful touching of the person of another by the aggressor. *Tinkler v Richter*, 295 Mich 396,401; 295 NW 201, 203 (1940).** [MR, 30]

Supporting evidence: [Case authority referenced by master]

11. **"Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both." MCL 750.81(1).** [MR, 30]

Supporting evidence: [Statute referenced by master]

12. **When Judge Bradfield angrily "poked" Mr. Adams in the chest several times, he committed both a criminal and a civil assault and battery upon the person of Mr. Adams.** [MR, 30]

Supporting evidence: [T, 34 (Adams), T, 130 (Webb), case and statute cited above]

13. **Judge Bradfield's claim that he believed Mr. Adams possibly to be "a well dressed thug," or possibly to be "a bomber," and that he was acting to protect the diminutive Officer Gray and Ms. Webb is simply not credible and is not believed.** [MR, 30]

Supporting evidence: [T, 271-272, 296 (Respondent)]

14. **A few minutes later, Judge Bradfield emerged from the elevator into the vestibule of the judges' entrance, and, unfortunately, encountered Judge Ross Adams, Mr. Adams and Ms. Webb.** [MR, 31]

Supporting evidence: [T, 42 (Adams), T, 133 (Webb), T, 80 (Judge Ross Adams)]

15. **Judge Ross Adams was discussing with Officer Gray the incident involving her husband.** [MR, 31]

Supporting evidence: [T, 41 (Adams), T, 133 (Webb), T, 78-79 (Judge Ross Adams)]

16. **Both Judge Bradfield and Judge Ross Adams became angry and their voices were raised; however, only Judge Bradfield was heard to use vulgar epithets and to challenge Mr. Adams.** [MR, 31]

Supporting evidence: [T, 42 (Adams), T, 80-81, 84 (Judge Ross Adams), T, 133-134 (Webb), T, 234-235, 240 (Syfax)]

17. **Mr. Adams said nothing.** [MR, 31]

Supporting evidence: [T, 73 (Adams)]

18. **This incident took place in the presence of Officer Gray, Officer Syfax and Ms. Webb.** [MR, 31]

Supporting evidence: [T, 132-133 (Webb), T, 174 (Gray), T, 233 (Syfax)]

19. **Officer Syfax defused the situation by inducing Judge Bradfield to leave the scene and accompany him into the elevator.** [MR, 31]

Supporting evidence: [T, 242 (Syfax)]

20. **Judge Bradfield's irrational anger continued when he was summoned to Judge Atkins' chambers and again encountered Judge Ross Adams and, later, Mr. Adams, further indicating the extent of his lack of self restraint.** [MR, 31]

Supporting evidence: [T, 86 (Judge Ross Adams), T, 135 (Webb), T, 190-192 (Judge Atkins)]

21. **Judge Bradfield persisted that, "I'm not going to take anyone talking to me like that," and, "it's a man thing," displaying a willful readiness to escalate a confrontational situation.** [MR, 32]

Supporting evidence: [T, 192 (Judge Atkins)]

22. **Judge Bradfield identically worded wrote letters of apology (Exhibits 8 and 9), to Judge Ross Adams and to Mr. Adams the next day, acknowledging that his "actions were an embarrassment to myself and to the office that I hold." Further, that "we as judges are held to a higher standard."** [MR, 32]

Supporting evidence: [Formal hearing exhibits 008 and 009]

Count II

1. **Effective October 7, 2002, the Gem Theater Parking Structure commenced an agreement with the 36th District Court to provide parking spaces for judges of the court.** [MR, 32]

Supporting evidence: [T, 224 (Davis)]

2. **On a date prior to the commencement of the agreement, Judge David Bradfield drove his vehicle into the structure, intending to park at that location, and identified himself as a judge of the 36th District Court.** [MR, 32]

Supporting evidence: [T, 208 (Lee)]

3. **Judge Bradfield apparently believed that the agreement was effect at that time.** [MR, 32]

Supporting evidence: [T, 209 (Lee)]

4. **Judge Bradfield became infuriated when he was informed that there was no parking space available for judges on that date.** [MR, 33]

Supporting evidence: [T, 209-210 (Lee)]

5. **Judge Bradfield refused to listen to the explanation offered by Mr. Lee, angrily threw to the ground the document proffered by Mr. Lee which stated the commencement date for judges to use the parking structure, refused or failed to consider an alternate parking space proposed by Mr. Lee; and recklessly sped out of the parking garage with squealing tires.** [MR, 33]

Supporting evidence: [T, 210-211 (Lee)]

6. **Mr. Lee promptly reported the incident to 36th District Court Administrator, not because of anger toward Judge Bradfield but rather from a desire to protect his employer from any retaliatory action.** [MR, 33]

Supporting evidence: [T, 212 (Lee)]

7. **Mr. Lee's testimony is corroborated by the testimony of 36th District Court Administrator, Mr. Otis J. Davis.** [MR, 33]

Supporting evidence: [T, 225-226 (Davis)]

8. **Mr. Lee was not shown to harbor any personal animus against Judge Bradfield, and the testimony of Mr. Lee regarding the incident is deemed credible.** [MR, 33]

Supporting evidence: [T, 216-217 (Lee)]

III. RESPONDENT'S OBJECTIONS ARE MERITLESS

In addition, Respondent's objections to the master's report are meritless, and fail to provide a basis to reject his findings.

1. Master's findings were properly based on evidence

The decision to admit or exclude evidence is a matter of the trial judge's sound discretion. *Campbell v Sullins,* 257 Mich App 179, 196 (2003) The master used his discretion in properly excluding two e-mails (proposed Exhibits 006 and 007) between 36th District Court judges and magistrates which related to security concerns. [T, 285-286 (Master)] Respondent first attempted to introduce the e-mails during the testimony of Chief Judge Ross Adams [T, 95-96] The content of any of the e-mails is unrelated to the factual allegations raised in either count of the formal complaint. The Examiner's object was that they concern judicial murders in Atlanta and Chicago, and in no way justify Respondent's use of profane and threatening language or committing an assault and battery. The master sustained the Examiner's objection to the e-mails

> without prejudice to the Defendant – Respondent to offer them at the appropriate time after a foundation has been laid to relevance. . . . If – if it's shown through some testimony that Judge Bradfield was aware of the memo and based his conduct at all in part or in total on this memorandum, then they'd be admitted. [T, 95-96 (Master)]

The master further concluded that the relevance of the e-mails (which the master described as the "memorandum") is whether Respondent reviewed them, what his understanding was of them, and perhaps his understanding of each judge's responsibility as directed by them. [T, 99-100 (Master)]

When Respondent moved to admit proposed Exhibits 006 and 007 during Respondent's testimony, and the Examiner again objected based on relevancy, the master concluded:

> Well, I understood Judge Bradfield to testify that he said he had no authority to regulate parking or admissions at the door. . . . Exhibit 006 and 007 are not received. [T, 285-286 (Master)]

Respondent's assertion that the e-mails relate should have been admitted as his actions were driven out of concern for court security is unconvincing for several reasons. First, as noted by the master, Respondent admitted at the formal hearing that he has "no authority to do anything down there" (referring to the monitoring the parking and entrance on Madison Avenue). [T, 280-281 (Respondent)] Finally, even if security was Respondent's motivation, that intent in no way justified his use of profane language, invitation to fight, threats, assault and battery, and in general any of his conduct relating to the incident. It is noteworthy that the e-mails do not relate in any way to Count II of the formal complaint.

The master's exclusion of the testimony of Viola Coleman was also proper. There is no dispute that she had no personal knowledge of the allegations in the formal complaint. Although she was a Wackenhut security guard assigned to the judges' entrance for a number of years, that assignment ended before April 2005 as Detroit police officers began guarding the door. [T, 244 (Coleman), T, 166 (Gray)] Coleman's testimony was intended to reflect Respondent's character in the past, which was not at issue at the formal hearing, and was not addressed by Respondent in his findings of fact.

MRE 405(b), the relevant evidentiary rule addressing methods of proving character for specific instances of conduct, states:

> In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

In the present case, character or a trait of character is not an element of the allegations against Respondent. The claims in the formal complaint are that he committed an assault and battery on one occasion, surrounded by profane language, and again engaged in a tantrum at the Gem Theater parking structure.

Respondent's claim that the testimony was necessary to somehow offset testimony of other witnesses as to Respondent's character which influenced the master, including a propensity for Respondent to display anger or untoward conduct, is meritless. The master's response to Respondent's argument regarding

that issue most succinctly addresses the claim and reveals that the master was not influenced by claims regarding Respondent's character:

> I have to acknowledge that similar things have been said, some without objection. Hearsay is hearsay, and so I'm going to be making a finding based on the testimony that that's offered here and not on statements such that you suggest here.
>
> What other people know, what everyone knows, whatever that may be, it's not relevant here. We're focusing on two specific instances. [T, 248-249 (Master)]

Therefore, the testimony of Coleman was properly excluded as it was not relevant under MRE 405(b).

Respondent also takes issue with the master's failure to consider the assertion that if Adams had identified himself, the incident would not have happened. The master did consider the contention, and found it specious and without merit. [MR, 29] In any event, that argument is irrelevant, as Respondent's profanity, belligerence, assault and battery, and general behavior are improper regardless of the identity of the person whom he belittled and assaulted.

In addition, the master did not display animus toward Respondent in his report. Contrary to Respondent's assertion in his objection, the master's reference to Respondent being an "officious intermeddler" was not an attack on the judge's character. The master used it in the context that Respondent had no authority to supervise or enforce parking restrictions, which Respondent admitted. The term "officious" is defined in Merriam-Webster's Collegiate Dictionary, Eleventh

Edition, as: "Volunteering one's services where they are neither asked nor needed." "Intermeddle" is to meddle impertinently and officiously and usually so as to interfere. Therefore, except for the possible error of redundancy, the master's comment was merely a conclusion that Respondent interfered where his involvement was not permitted, particularly in light of Respondent's admissions.

The master's other findings of fact do not reflect any "malevolence" against Respondent, as alleged in the objections. As noted by the master, he relied heavily on *verbatim* testimony of witnesses to reach determine his findings. [MR, 28] The master reviewed the testimony of all witnesses, and made his findings based on them. He did not ignore testimony. He chose to believe certain versions of the events over others when there were conflicts in testimony. That does not reflect "malevolence" by the master. It merely reveals that he was doing his job.

The Examiner is compelled to comment on a statement made at page 7 of Respondent's objections, but is not addressed in his argument. Respondent contends that the Examiner's reference to other judicial disciplinary cases involving Respondent in his hearing memorandum was an attempt to improperly influence the master.

In fact, hearing memorandums are frequently used in judicial disciplinary proceedings to educate a master on procedures, his duties, and relevant law. There are extremely few cases in Michigan, and for that matter across the country, where a judge has committed conduct similar to that alleged in the present case. That is

particularly true as to the assertion that a judge has committed an assault and battery. Moreover, the prior cases involving Respondent were all published decision of the Supreme Court, and, thus, matters of public record. The Examiner was merely providing legal guidelines for the master from past relevant judicial disciplinary cases.

In addition, there is no doubt that the master, who was a long-serving trial judge, can separate findings of fact in the present matter from the misconduct of Respondent in other judicial disciplinary cases. Judges often are aware of past conduct of parties (particularly criminal defendants) in cases, and have to separate that knowledge from the facts presented. The Commission must also undertake that task in every disciplinary formal proceeding, as this phase of the proceedings involves consideration of the master's findings of fact, and a determination of a sanction recommendation that necessarily involves past conduct. MCR 9.216 requires the submission of the parties' assessment of the master's findings, and a discussion of sanctions, at the same time. Finally, the Supreme Court also makes this dual consideration when the case is presented to it. The master clearly has the ability to make his findings of fact based solely on the evidence presented to him at the formal hearing, and clearly did so in this proceeding.

2. The master properly concluded that Respondent committed an assault

Respondent's conduct in April 2005 constituted assault and battery. A civil assault is defined as

> any intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact. *Smith v Stolberg,* 231 Mich App 256, 260 (1998)

Smith defined battery as "the willful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Id.* In *Smith,* the plaintiff alleged that the defendant negligently touched or pushed the plaintiff, which was sufficient, if proved, to establish claims of assault and battery. Clearly, Respondent's conduct constituted a civil assault and battery. Respondent did not assert otherwise in his objections.

Respondent's actions even constitute criminal assault and battery, which differs from the analogous civil law concept. A criminal assault is either an attempt to commit a battery, or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *People v Terry,* 217 Mich App 660, 662 (1996) A criminal "battery" is the willful touching of person of another by an aggressor, or by some substance put in motion by him, often referred to as the "consummation of an assault." *People v Bryant,* 80 Mich App 428, 433 (1978) Under Michigan law, a person who commits a criminal assault, or an assault and battery, is guilty of a misdemeanor. MCL 750.81.

In his objections, Respondent ignores the fact that he committed an actual criminal battery by willfully touching the person of Adams as an aggressor. Respondent poked Adams at least five times, and it hurt Adams. [T, 34 (Adams)] Officer Gray confirmed it was an act of "poking" and that at the time Respondent was acting in a "loud and aggressive" manner. [T, 162 (Gray)] Webb confirmed that Respondent was talking in a threatening manner toward Adams. [T, 130 (Webb)] Taking into consideration the descriptions of Respondent's behavior during the incident, the poking of Adams was clearly an intentional act. In addition, Respondent's assertion that Adams never asserted he was worried about his safety or concerned that Respondent would hurt him is not relevant, as that test only applies if a battery is not committed. The battery occurred due to Respondent's own volition. The master, after considering all relevant testimony, concluded that the act was intentional and a criminal assault and battery occurred.

Respondent has noted that criminal charges have not been filed against him. Adams admitted that after he filed a police report, he did not pursue the matter. However, the Michigan Supreme Court recently reaffirmed the fact that a judge's conduct can violate the Code of Judicial Conduct without regard to whether criminal charges were ever filed, or even in cases in which a judge has been acquitted from criminal proceedings. *In re Halloran,* 466 Mich 1219, 1220 (2002), citing *In re Loyd,* 424 Mich 514, 525-531 (1986); *In re Jenkins,* 437 Mich 15, 16-18, 20, 23-24 (1991).

3. Gem Theatre parking charges are timely

Respondent asserts that he should not have been forced to defend the charges regarding the Gem Theater parking structure, which were based on events that occurred in October 2002. There is no basis for that objection. The court rules plainly state that affirmative defenses – including laches – must be raised in the party's first pleading. Respondent's claim of delay between the time of the October 2002 incident and the issuance of the formal complaint is one of laches that should have been raised as an affirmative defense in his first pleading. His having failed to do so, however, waives this issue. MCR 9.209(B)

In any event, the allegations against Respondent are timely. There is no statute of limitations in Judicial Tenure Commission proceedings. There was sufficient testimony from Lee and Davis, other witnesses with knowledge regarding the matter, to confirm that the events occurred. Respondent's convenient inability to recollect the matter does not mean that it did not occur. In addition, there was no testimony or other evidence offered that any other individual witnessed the incident, and therefore Respondent's ability to question any witnesses to the matter was not compromised. All witnesses to the incident testified at the hearing.

The cases cited by Respondent to support his assertion that untimely matters should not be litigated address time periods of 26 years [*Chase v Sabin,* 445 Mich 190 (1994)] and five years [*Shields v Shell Oil Company,* 237 Mich App 682

(1999)]. Thirty months is far shorter than either period. Further, the *Shields* case addressed the application of a specific statute of limitation or repose, which is not at issue present in this case. Both cases are irrelevant to the present proceedings, and the incident at the Gem Theater parking structure was properly alleged in the formal complaint, and considered by the master.

IV. REMOVAL IS THE ONLY APPROPRIATE SANCTION

There are several considerations which the Commission should take into account when assessing sanctions. Those are the nature of Respondent's misconduct [including the factors addressed by the Supreme Court in *In re Brown,* 461 Mich 1291, 1292-1293 (1999)], Respondent's past conduct, other similar cases (the proportionality analysis), and Respondent's truthfulness at the hearing. Based on these factors, the Commission should recommend that Respondent be removed from judicial office. Before addressing the *Brown* criteria, other factors must first be addressed.

1. Truthfulness at hearing

In *In re Noecker,* 472 Mich 1, 13 (2005), the Supreme Court addressed dishonest conduct by a judge:

> Central to our decision to remove respondent is our conclusion that respondent misled the police, the public, and the JTC about his drinking on March 12, 2003. Respondent's insistence that he was sober at the time of the accident ***is not credible***. His misrepresentations about being sober when he caused an automobile

> accident that carried civil and criminal consequences are antithetical to his judicial obligation to uphold the integrity of the judiciary. Respondent's repeated deception and the publicity surrounding the incident have seriously eroded the public's confidence in him and in the judiciary.
>
> * * *
>
> Likewise, the nature of respondent's lies, and the apparent motives behind them, have seriously harmed the integrity of the judiciary. Respondent's continued deception before the JTC has seriously undermined the public's faith that judges are as subject to the law as those who appear before them. His continued dishonesty with regard to the events of March 12, 2003, justifies his removal from office. (Emphasis added.)

In a concurring *Noecker* opinion, Justice Robert P. Young stated:

> Where a respondent judge readily acknowledges his shortcomings and is completely honest and forthcoming during the course of the Judicial Tenure Commission investigation, I believe that the sanction correspondingly can be less severe. However, where a respondent is not repentant, but engages in deceitful behavior during the course of a Judicial Tenure Commission disciplinary investigation, the sanction must be measurably greater. Lying under oath, as the respondent has been adjudged to have done, makes him unfit for judicial office. *Id.* at 18.

Respondent's actions in the present disciplinary proceeding are consistent with the *Noecker* court's assessment of a proper sanction for a judge who has engaged in conduct with serous civil and criminal consequences, yet continues to refuse to engage in deception regarding the incident. Further, they are consistent with Justice Young's description of circumstances which merit the imposition of a "measurably greater" sanction.

A. The master's conclusions regarding Respondent's representations

The master concluded that Respondent's contention that Adams' failure to identify himself as Deputy Mayor and Judge Ross Adams' husband contributed to the resulting acrimony is specious at best, and without merit. [MR, 28-29, T, 291 (Respondent)] In addition, as all witnesses who observed Adams noted his reserved demeanor and that he did not respond to Respondent's "vituperations," the master concluded it is unlikely that Adams used the calumnious appellation alleged by Judge Bradfield. [MR, 29, T, 266 (Respondent)] Further, the master concluded that Respondent's belief that Adams may have possibly been a "well dressed thug" or "a bomber," and that Respondent was acting to protect the diminutive Officer Gray and Webb, is simply not credible and was not believed. [MR, 30, T, 271-272, 296 (Respondent)]

The facts concerning Respondent's lack of veracity in this matter are similar to those presented in *Noecker*. Respondent has engaged in misleading conduct as to the underlying incidents. His deception, as well as the publicity surrounding these events, have "seriously eroded the public's confidence in [Respondent] and in the judiciary." *Id.* at 13. The nature of his lies has "seriously harmed the integrity of the judiciary." *Id.* Finally, and possibly the most important ramification of Respondent's conduct, his actions have "seriously undermined the public's faith that judges are as subject to the law as those who appear before

them." *Id.* Respondent, like Judge Noecker, should be removed from judicial office.

B. Independent evidence supports the master's conclusions regarding Respondent's representations

Respondent's claim that he thought Adams was a terrorist or thug is wholly vitiated by his own conduct. Respondent claims he acted as he did because he did not know who Adams was. Yet, he continued his tantrum inside the judges' entrance even after his colleague, Judge Adams, was present and Mr. Adams' identity was no longer in "doubt" (if it ever was). At that time, Respondent clearly knew the identity of Adams, yet still referred to him as a "mother fucker" and challenged him to a fight by going out "to the street." If knowledge of Adams' identity truly meant anything to Respondent, the second phase of the incident involving Judge Adams inside the judges' door would not have taken place.

The master's conclusion regarding Respondent's lack of credibility as to his purported attempt to aid two diminutive women (referring to Webb and Officer Gray, who was in uniform) compared to a big guy going in the courthouse (Adams) is also supported by independent evidence. Security photographs reflect Respondent approaching the judges' entrance (excerpts from formal hearing Exhibit 010, and included as Attachments 1 and 2). The photographs reflects that Adams was already entering the door, with Webb and Gray (who is holding the door open) standing behind him. It is clear that Adams was not a threat, as the

women were in no way in his control. Further, Respondent did not step between Adams and the women. He moved past those he was purportedly attempting to protect to confront Adams, and allowed Adams to remain in close proximity with them. Neither Webb nor Gray testified that Respondent made any inquiry as to whether they were in danger, or took any action to separate them from Adams.

In addition, Respondent's assertions in his answer and throughout the formal hearing that he was acting out of concern for court security are also suspect. Judge Atkins testified that at the meeting in her chambers immediately following the incident, he did not raise courthouse security. Judge Atkins testified:

> Judge Bradfield expressed that he didn't know who Mr. Adams was, and nobody was supposed to park in the judges' spot. It didn't have anything about somebody coming into the building or going up the elevator. It strictly had to do with who was parking in the judges' parking spot. [T, 203 (Judge Atkins)]

Respondent's "spin" on the facts, obviously concocted in hindsight in an attempt to justify his outrageous conduct, is not believable.

C. Contradictory statements regarding Count II

Respondent denied the allegations in the formal complaint concerning the Gem Theater parking structure. In fact, Respondent asserted that if such an incident occurred and a judge was involved, "that judge was not Judge Bradfield." [Respondent's Answer to Formal Complaint No. 79, page 8, paragraph 49] However, at the formal hearing, Respondent testified that he could not recall the

incident, and could not respond "yes" or "no" to an inquiry as to whether it occurred. [T, 290-291 (Respondent)] Respondent's denial in his answer in the formal complaint is quite different from his inability to recall the matter at the formal hearing. The obvious question is whether either of Respondent's contradictory statements is true, or whether the third alternative (that he remembers the incident and has deliberately failed to acknowledge it) is occurring. The only answer is that regardless of which is true, Respondent was not being forthcoming either in his answer to the formal complaint, or at the formal hearing.

2. Proportionality

In re Gilbert, 469 Mich 1225 (2003) and *In re Halloran,* 466 Mich 1219 (2002), each involved inappropriate public behavior by judges in off-the-bench activities. Judge Gilbert publicly smoked marijuana at a rock concert and several times before that and was publicly censured and suspended for six months without pay. Judge Halloran exposed himself in an airport restroom and was publicly censured and suspended for ninety days without pay. Neither judge was charged with a criminal act, but arguably could have been. The relatively light sanctions were in part imposed as each judge acknowledged the impropriety of their conduct, and had no other disciplinary record. Respondent, as noted below, has not been completely forthcoming in his representations to the Commission.

While not specifically labeling the act an assault, the Michigan Supreme Court determined that grabbing a female airline employee's braided hair, and pulling her head back (accompanied by verbal abuse and insults), constituted misconduct. *In re O'Brien,* 441 Mich 1204, 1205 (1992). The respondent in that matter was not charged criminally, yet the Supreme Court held that his conduct violated several ethical canons, and Judge O'Brien was publicly censured. Judge O'Brien had not previously been sanctioned by the Supreme Court when he was censured, unlike Respondent's past two sanctions for belligerent conduct. In addition, *O'Brien* was decided seven years before the *Brown* factors were announced. *O'Brien*-type conduct today would warrant a more severe sanction.

Judicial conduct that is not an assault or battery, but nonetheless reflects a display of bad temper, anger, or an improper demeanor, is improper. The Michigan Supreme Court addressed a public display of anger and foul language by one judge against another in *In re Moore,* 449 Mich 1204 (1995). Judge Warfield Moore interrupted a court hearing being conducted by then-Chief Judge Dalton Roberson, and made two references to "a damn phone," referred to Judge Roberson as a "damn Heathen [*sic*]," and stated that Judge Roberson's position as Chief Judge "don't mean stinkin' shit, man." The Commission concluded that Judge Moore's profane language and abusive manner demonstrated a gross lack of judicial temperament, demeaned his judicial office and the judiciary in general, and disparaged his judicial colleague (which was widely reported in the media). The

Supreme Court held that they constituted misconduct prejudicial to the administration of justice. Judge Moore was publicly censured by the Supreme Court. Again, at the time Judge Moore had engaged in one act of misconduct.

A Minnesota case dealing with an assault and battery is *Inquiry into the Conduct of Ginsburg,* 690 NW2d 539 (Minn 2004). Respondent was charged with various acts of misconduct, which included an allegation that he assaulted a 14-year-old boy who hid his son's bike in a dumpster. Respondent grabbed the boy off a bicycle, pushed him onto a bench, and slapped him in the face. Respondent ultimately admitted he engaged in the conduct. The Minnesota Supreme Court commented on Respondent's actions:

> Those who come before the courts cannot reasonably be expected to respect the law if those who preside on the bench are not perceived as respectful of the law. As we stated in *Winton:*
>
> > A judge has a position of power and prestige in a democratic society espousing justice for all persons under law. The role of the judge in the administration of justice requires adherence to the highest standard of personal and official conduct. Of those to whom much is committed, much is demanded. A judge, therefore, has the responsibility of conforming to a higher standard of conduct than is expected of lawyers or other persons in society. Willful violations of law or other misconduct by a judge, whether nor not directly related to judicial duties, brings the judicial office into disrepute and thereby prejudices the administration of justice. A judge's conduct in his or her personal life adversely affects the administration of justice when it diminished public respect for the judiciary. Our legal system can function only so long as the public, having confidence in the integrity of its judges, accepts and abides by judicial

> decisions. The essential attributes of a judge are not only intellectual competence but adherence to ethical standards of conduct. (Citations omitted.) *Id.* at 549-550.

The respondent judge was removed from judicial office base on his actions, as well as a disability he claimed that compelled him to engage in the improper conduct.

None of the other cases addressed by Respondent in assessing an appropriate sanction considers a disciplinary history as serious as that attributable to Respondent, which include multiple acts of aggressive and belligerent behavior, and two incidents of assault and battery. Respondent's assessment that a public reprimand is a sufficient reprimand fails to account for his repeated serious acts of misconduct. In fact, the variety of the underlying facts in the cases raised by Respondent when addressing sanctions compels the conclusion that if the disciplinary proceeding resulted in a public censure, the case was relevant no matter what the facts were, and was included in the sanctions analysis.

It is curious that Respondent relies on *In re Ford,* 469 Mich 1252 (2004), as one of the cases to support his claim for a moderate sanction. The Supreme Court publicly censured former judge Stephen Ford ***following*** his resignation from office. As a *former* judge, however, a public censure was the highest sanction he could have received. Ford acknowledged kissing a female court employee and rubbing her breasts, both of which were unwelcome by the employee. His resignation was a result of a plea agreement in a criminal proceeding, where Ford

pled no contest to a reduced charge of aggravated assault, a one-year misdemeanor, MCL 750.81a. In its Decision and Recommendation, the Commission noted that Ford's actions mandated removal from office, but his resignation left public censure as the most severe penalty that could be imposed, a statement not rejected by the Supreme Court.

3. Assessing Respondent's misconduct

A. *Brown* factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *Brown*. A discussion of each relevant factor follows.

(1) Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct

Respondent's actions in the present case, when considered with his prior acts of misconduct addressed below, establish a clear pattern of angry and belligerent acts that are inconsistent with proper judicial demeanor and conduct. In 1995, Respondent was publicly censured for misconduct involving parking a car in a public lot. He was publicly censured and suspended without pay in 2002 for a number of things, including loss of temper. As part of the resolution of that matter, Respondent attended anger management therapy. Yet, later in that same year, Respondent was "ranting and raving" about parking spaces at the Gem Theatre structure. Respondent has established a clear and convincing inability to control his temper, which leads him to act in a manner contrary to the Code of Judicial

Conduct. Respondent's tirades bring obloquy and ridicule not only to himself, but to the entire judiciary.

(2) Misconduct on the bench is usually more serious than the same misconduct off the bench

Respondent's present actions occurred off the bench, which is generally less serious in the context of the impact on the number of individuals affected by his conduct. However, inasmuch as the conduct in April 2005 involved a violation of a criminal statute, it is an extremely serious matter.

(3) Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety

Respondent's actions were not directly prejudicial to the administration of justice, as they did not involve Respondent's duties as a judge. However, the conduct reflected actions that Respondent addresses while considering matters on the bench. It is reasonable to conclude that a person who reacts with such violence and venom regarding something as inconsequential as a parking space – and who has done so for years despite even having undergone anger management therapy – will not look at the angry outbursts of another person the way a calm, detached, neutral magistrate should. As such, Respondent's personality, bent, temperament, or demeanor prevent him from comporting with the minimal requirements of civility. Absent that basic level of self-control, Respondent has not business being a judge, and the Commission should find him unfit to serve.

(4) Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does

Respondent's actions in the present case do not implicate the actual administration of justice.

(5) Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated

Respondent's repeated, angry acts reflect a predisposition toward belligerent and abusive conduct. In the case at bar, he could have gone first to the police officer, rather than afterward. His self-appointed role as a parking attendant showed he was merely an "officious intermeddler." Respondent could have resolved this matter peacefully at any point; yet he charged on headstrong, furious, and uncontrollable. Although he may not have "premeditated" his actions in the sense of thinking about them leisurely the day before, he had opportunity after opportunity to cool off and walk away form the "problem" – a problem that he alone created. His failure – or inability – to do so means that he either deliberately engaged in this awful conduct, or, that he could not conform his conduct to the norms of a civilized society. Either way, Respondent has repeatedly demonstrated that he is not fit to be a judge.

(6) Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery

Respondent's misconduct did not serve to undermine the ability of the justice system to discover the truth in a legal controversy.

(7) Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

This factor lacks applicability to the present facts.

B. Respondent's disciplinary record

The Supreme Court stated that factors enumerated in *Brown* were not exclusive and recognized the Commission's ability to consider other "appropriate standards." *Id*, at 1293. The Commission has accordingly also considered Respondent's discipline record, his reputation, and his years of experience, which are additional factors listed by the American Judicature Society.[1]

Respondent has had significant prior involvement with the disciplinary system. He is a long-serving district court judge. His extensive judicial experience is an aggravating factor in evaluating his misconduct as he is well aware of the conduct expected of one holding judicial office.

[1] "How Judicial Conduct Commissions Work," American Judicature Society, 1999, p 15-16.

In *In re Bradfield,* 448 Mich 1229 (1995), concerning Formal Complaint No. 49, Respondent engaged in a dispute with another shopper over a parking spot at a local mall. Respondent then disregarded a security guard's instruction to both individuals to find another location to park, and he drove his vehicle into that space. Respondent's car struck the guard, causing injury for which the guard obtained medical attention. Although Respondent was never charged criminally, he accepted the master's finding of facts and conclusions of law and consented to a public censure, which the Supreme Court approved.

In *In re Bradfield,* 465 Mich 1309 (2002), arising from Formal Complaint No. 66, Respondent stipulated that his actions in two cases constituted misconduct. He yelled at a defendant who was attempting to explain that an unpaid civil infraction that was 12 years old was not his responsibility, but instead were those of his nephew who had the same name. Respondent admitted he refused to hear evidence that would prove the claim, was rude, and yelled at the defendant without provocation (including a closing statement of: "You think I'm going to buy that, hell no.") Respondent admitted that his demeanor was wrong and improper.

In another case before Respondent that was part of the same disciplinary proceeding, a defense attorney initiated a grievance against Respondent, whose comments were sought by the Commission (thus advising Respondent that the grievant had filed a complaint against him). When the grievant later appeared before Respondent, the attorney filed a motion for disqualification, which the judge

denied. Respondent refused to refer the matter to the chief judge for review, claiming the attorney did not have the right. Respondent's decision, which appeared to be a thinly veiled act of revenge against the attorney for filing the grievance, directly contradicted disqualification procedure. The relevant court rule mandates referral to and review by the chief judge on request of the moving party.

The Commission issued a sanctions recommendation to the Supreme Court based on Respondent's stipulation to a public censure, with a suspension without pay for 30 days. The Supreme Court adopted the recommendation.

Respondent failed to raise his past encounters with the judicial disciplinary system in addressing sanctions in the present matter. Clearly, the similarity to the misconduct in the present case, particularly to the past assault involving a parking dispute, cannot be ignored. Past disciplinary complaints against a judge are a relevant consideration for the Commission when determining a recommendation for a sanction. *In re Moore,* 464 Mich 98, 129 (2001)

Respondent has not learned from his past sanctions by the Supreme Court. Even a thirty-day suspension without pay did not impress upon him the importance of maintaining control of his anger whether on or off the bench. Respondent may contend that the passing of time between sanctions merits the other reprimands meaningless. One would expect that any other judge who had angrily committed an assault and battery by running his car into another person, and was publicly censured for that conduct after a formal hearing, would never engage in anger-

based misconduct again. However, Respondent's repetitive misconduct confirms that an anger and belligerence are permanent facets of Respondent's personality.

In 2002, Respondent was again publicly censured for anger management issues, only this time he also received a 30-day suspension without pay. He took anger management therapy, and notified the Commission that he had completed the class on March 23, 2002. (Attachment 3) Less than eight months later, however, Respondent again erupted in anger at the parking attendant in the Gem Theater parking structure as described in Count II. Respondent seems to snap at the slightest perceived affront, such as not getting "his" parking spot. Such conduct reflects poorly on him individually and, worse still, on the judiciary as a whole.

Respondent's disciplinary coupled with his misconduct in the present case establish that he is prone to tantrums of a two-year-old: he acts out how he wants, when he wants, and where he wants, regardless of the impact on other people. He has committed two acts of assault and battery and verbally abused a fellow judge. His repeated outbursts reveal that he is unable to control his temper. His public use of profanity is improper by an individual who holds judicial office. His invitation to fight another person reflects an immature character. The findings in the present case, when considered with the failure of past attempts at remedying Respondent's conduct, warrant Respondent's removal, as no lesser sanction has been able to correct his misconduct or remove the taint he continues to bring to the judiciary.

V. CONCLUSION

The evidence clearly supports the master's findings of fact. Respondent is guilty of misconduct as alleged in the formal complaint. In April 2005, he physically assaulted and verbally abused Deputy Mayor Anthony Adams and his wife, 36th District Court Judge Deborah Ross Adams, at the judges' entrance to the 36th District Court. Respondent shouted, screamed profanities, attempted to engage in a fight, and thumped Deputy Mayor Adams in the chest, which constituted a civil and criminal assault and battery.

In October 2002, at the Gem Theatre Parking Garage, Respondent became angry when a parking space for him was not available, as the parking agreement between the structure and the court had not yet taken effect. Although the attendant offered Respondent a parking space for that day anyway, Respondent shouted and engaged in a tantrum before speeding away.

Further, Respondent has not been truthful regarding certain allegations made against him, in an attempt to deflect the consequences of his conduct. Based on Respondent's misconduct relating to the present allegations, his lack of truthfulness during the proceedings, and his prior sanctions for quite similar misconduct, the Commission should recommend that the Supreme Court remove Respondent from judicial office.

WHEREFORE, the Examiner respectfully requests the Commission to:

(1) **AFFIRM** the master's report in all aspects; and

(2) RECOMMEND to the Supreme Court that Respondent be **REMOVED** from the office of judge of the 36th District Court.

Respectfully submitted,

Paul J. Fischer (P 35454)
Examiner

Casimir J. Swastek (P42767)
Associate Examiner
3034 W. Grand Boulevard, Suite 8-450
Detroit, MI 48202
(313) 875-5110

Dated: November 4, 2005

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ATTACHMENT 1

ATTACHMENT 2

relationship institute

teaching the world to love

March 23, 2002

Dr. Byron Wolffing
Henry Ford Medical Center
19401 Hubbard
Dearborn, MI 48126

RE: Mr. David Bradfield

Dr. Wolffing:

This letter is to confirm that Mr. David Bradfield participated in and successfully completed the one day Anger Management class on March 23, 2002 at the Relationship Institute. If you have any questions please contact us at 248-546-0407.

Sincerely,

Thad Zaremba, ACSW
Senior Therapist/Educator
Relationship Institute

ATTACHMENT 3

123 S. Main Street, Suite 100
Royal Oak, Michigan 48067

(248) 546-0407

www.relationship-institute.com

STATE OF MICHIGAN
IN THE SUPREME COURT

COMPLAINT AGAINST:

HON. DAVID MARTIN BRADFIELD **FORMAL COMPLAINT NO. 79**
Judge, 36th District Court
Detroit, MI 48226

_____/

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

TONYA BELL, being sworn, states: I am employed with the Judicial Tenure Commission. On November 4, 2005, I served a copy of the Examiner's Reply to Respondent's Objections to Master's Report and a copy of this Proof of Service upon Brian D. Einhorn, counsel for the Respondent, via U.S. mail at the following address:

Brian D. Einhorn
Collins, Einhorn, Farrell and Ulanoff
4000 Town Center, Suite 909
Southfield, MI 48075

Tonya Bell
TONYA BELL

Subscribed and sworn to before me on
this 4th day of November, 2005

Camella Thompson
CAMELLA THOMPSON
NOTARY PUBLIC, WAYNE COUNTY, MI
My Commission Expires: 1-26-2012

CAMELLA THOMPSON
Notary Public, State of Michigan
County of Wayne
My Commission Expires Jan. 26, 2012
Acting in the County of Wayne

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